Loh Teck Wah v Lim Pang Kiam & Ors and other applications

HIGH COURT (KUALA LUMPUR) — ORIGINATING SUMMONS NOS WA-24NCC-229–05 OF 2021, WA-24NCC-248–05 OF 2021 AND WA-24NCC-249–05 OF 2021
CHAN SOW KENG JC
3 MAY 2022

Companies and corporations — Directors — Right to inspect and take copies of documents, records and information of company — Whether directors had absolute right to inspect and take copies of documents of company without having to give reason for wanting the same — Whether director denied access to documents, records and information of company was entitled to apply to court for order granting him access without having to show he had made a prior request or demand for access which had been denied — Whether the only way director's right to inspect documents, records and information of company could be denied was if it was proven that the director would misuse the information so obtained to injure the company — Whether director's right to inspect company's documents encompassed his right to also take copies of same — Companies Act 2016 ss 48(3) & 245

In the instant three originating summonses ('the OS'), the plaintiff sought an order under s 245 of the Companies Act 2016 (the 'CA') allowing him to inspect and take copies of documents, records and information of the four companies cited as defendants in the OS ('the four companies') and that, in carrying out that purpose, he be assisted by his auditor, Venu Shaistri a/l Sangaran, and be allowed access to servers, cloud storages and any other devices where the documents, records and information were kept. The plaintiff, the first defendant ('D1') and the second defendant ('D2') in the OS were shareholders and directors of the four companies. The relationship between the plaintiff, on the one hand, and D1 and D2, on the other, had broken down and the OS were part of numerous suits between the parties and the companies. The plaintiff complained that he was excluded from the management of the four companies and he needed access to the documents, records and information of the companies to verify their audited statements. He submitted that as a director, his right to inspect the documents, records and information of the companies was absolute and he did not have to give a reason for wanting the inspection.

Held, allowing the plaintiff's applications with costs:

(1) The plaintiff had proven on balance of probabilities that he was entitled to the orders that he sought. The defendants' objections to inspection of the documents by the plaintiff had no substance (see para 40).

(2) It was well established that a company director had the right to have access to, and to inspect, documents of the company for the purpose of enabling him to carry out his duties as a director for the company's benefit. As each director owed duties to the company to attend to its affairs, it was self-evident that the right to have access to the company's documents and records was to inform the director as to the company's affairs and therefore, enable him/her to carry out such duties better. This duty was important as directors were exposed to individual liabilities in respect of actions or omissions by them in respect of the company's affairs. By virtue of his office, therefore, a director had absolute right of access to company records and he did not need to provide any justification on why he needed access. If there was abuse of process or misuse of the information obtained, resort could always be made to the court to deal with such eventuality (see paras 35–36).

(3) In the instant case, the defendants had not shown any 'real ground' that the plaintiff's right of inspection would be abused and that substantial harm would be caused to the companies thereby. The mere possibility of abuse or misuse of the right of inspection was not, in law, a ground for its denial or restriction. It was also wrong for the defendants to contend that a prior request or demand for inspection which had been refused was a *sine qua non* for the commencement of an action for an order to inspect under s 245(4) of the CA. The words used in s 245 were clear and the Court's duty was to give those words their plain and ordinary meaning. Even if it was argued that a prior demand was necessary, the OS that the defendants had been served with was itself a demand for inspection (see paras 16, 16(a)–16(b) & 37).

(4) The scope of inspection provided by the CA potentially covered any documents belonging to the company, corporate records and accounts, corporate information and accounting and other records of the company. The court should be slow to accede to arguments advanced by companies which were intended to encourage a restrictive approach to what a director was allowed to inspect. Any order made by the court would naturally be confined to the ambit of the CA itself (see para 30(e)(ii)).

(5) The defendants' argument that s 245 did not allow the plaintiff to make copies of documents had no merit as the right of inspection of a director encompassed the right to ask for copies of the documents. Section 245 of the CA had to be read with s 48, in particular, s 48(3) of the CA (see para 30(e)(iii)).

(6) Pursuant to s 245(8) of the CA, the plaintiff was entitled to appoint his auditor, Venu Shaistri a/l Sangaran ('Mr Venu'), to assist him in his inspection of the records of the four companies. In any event, the defendants did not object to Mr Venu's appointment in the current application (see para 39).

[Bahasa Malaysia summary

Dalam tiga saman pemula ('OS') semasa, plaintif memohon satu perintah di bawah s 245 Akta Syarikat 2016 ('AS') yang membenarkannya memeriksa dan membuat salinan dokumen, rekod dan maklumat empat syarikat yang dirujuk sebagai defendan dalam OS tersebut ('empat syarikat') dan bahawa, dalam melaksanakan tujuan tersebut, beliau dibantu oleh juruauditnya, Venu Shaistri a/l Sangaran, dan dibenarkan akses kepada pelayan, storan awan dan mana-mana peranti lain di mana dokumen, rekod dan maklumat disimpan. Plaintif, defendan pertama ('D1') dan defendan kedua ('D2') dalam OS adalah pemegang saham dan pengarah empat syarikat tersebut. Hubungan antara plaintif, di satu pihak, dan D1 dan D2, di pihak yang lain, telah rosak dan OS adalah sebahagian daripada beberapa tindakan antara pihak-pihak dan syarikat-syarikat. Plaintif mengadu bahawa beliau dikecualikan daripada pengurusan empat syarikat tersebut dan beliau memerlukan akses kepada dokumen, rekod dan maklumat syarikat untuk mengesahkan penyata diaudit mereka. Beliau berpendapat bahawa sebagai pengarah, haknya untuk memeriksa dokumen, rekod dan maklumat syarikat adalah mutlak dan beliau tidak perlu memberikan alasan bagi pemeriksaan tersebut.

Diputuskan, membenarkan permohonan plaintif, dengan kos:

(1) Plaintif telah membuktikan atas imbangan kebarangkalian bahawa beliau berhak mendapat perintah yang beliau mohon. Bantahan defendan terhadap pemeriksaan dokumen oleh plaintif tidak mempunyai dasar (lihat perenggan 40).

(2) Ianya adalah jelas bahawa seseorang pengarah syarikat mempunyai hak untuk mempunyai akses kepada, dan untuk memeriksa, dokumen syarikat bagi tujuan membolehkannya menjalankan tugasnya sebagai pengarah bagi kepentingan syarikat. Memandangkan setiap pengarah mempunyai tanggungjawab kepada syarikat untuk mengurus hal ehwalnya, ia adalah jelas bahawa hak untuk mendapat akses kepada dokumen dan rekod syarikat adalah untuk memaklumkan pengarah tentang hal ehwal syarikat dan oleh itu, membolehkan beliau menjalankan tugas sedemikian dengan lebih baik. Kewajipan ini adalah penting kerana pengarah terdedah kepada liabiliti individu berkenaan dengan tindakan atau pengecualian oleh mereka berhubung hal ehwal syarikat. Oleh itu, berdasarkan jawatannya, seorang pengarah mempunyai hak mutlak untuk mengakses rekod syarikat dan beliau tidak perlu memberikan sebarang justifikasi mengapa beliau memerlukan akses. Sekiranya terdapat penyalahgunaan proses atau penyalahgunaan maklumat yang diperolehi, terdapat langkah yang sentiasa ada bagi mahkamah untuk menangani kemungkinan tersebut (lihat perenggan 35–36).

(3) Dalam kes semasa, defendan tidak menunjukkan apa-apa 'alasan sebenar'

bahawa hak plaintif untuk pemeriksaan akan disalahgunakan dan bahawa kemudaratan yang besar akan ditimbulkan kepada syarikat tersebut. Kemungkinan penyalahgunaan hak untuk pemeriksaan, dalam undang-undang, bukan alasan untuk penafian atau sekatannya. Ia adalah salah bagi defendan untuk berhujah bahawa permintaan atau permohonan awal untuk pemeriksaan yang telah ditolak adalah *sine qua non* bagi memulakan tindakan bagi perintah untuk memeriksa di bawah s 245(4) AS. Perkataan-perkataan yang digunakan dalam s 245 adalah jelas dan tugas mahkamah adalah untuk memberikan perkataan-perkataan tersebut makna yang jelas dan biasa. Walaupun dihujahkan bahawa tuntutan awal adalah perlu, OS yang telah disampaikan kepada Defendan dengan sendirinya adalah permintaan untuk pemeriksaan (lihat perenggan 16, 16(a)–16(b) & 37).

(4) Skop pemeriksaan yang disediakan oleh AS berpotensi meliputi sebarang dokumen kepunyaan syarikat, rekod dan akaun korporat, maklumat korporat dan perakaunan dan rekod lain syarikat. Mahkamah tidak seharusnya tergesa-gesa untuk menerima hujah yang dikemukakan oleh syarikat yang bertujuan untuk menggalakkan pendekatan mengehadkan perkara yang dibenarkan oleh pengarah untuk diperiksa. Sebarang perintah yang dibuat oleh mahkamah secara semula jadi akan terhad kepada bidang kuasa dalam AS itu sendiri (lihat perenggan 30(e)(ii)).

(5) Hujah defendan bahawa s 245 tidak membenarkan plaintif membuat salinan dokumen tidak mempunyai merit kerana hak pemeriksaan pengarah merangkumi hak untuk meminta salinan dokumen tersebut. Seksyen 245 AS perlu dibaca dengan s 48, khususnya, s 48(3) AS (lihat perenggan 30(e)(iii)).

(6) Menurut s 245(8) AS, plaintif berhak melantik juruauditnya, Venu Shaistri a/l Sangaran ('En Venu'), untuk membantunya dalam pemeriksaannya terhadap rekod empat syarikat tersebut. Walau apa pun, defendan tidak membantah pelantikan En Venu dalam permohonan semasa (lihat perenggan 39).]

Cases referred to

Conway and others v Petronius Clothing Co Ltd and others [1978] 1 All ER 185, Ch D (distd)

Dato' Seri Timor Shah Rafiq v Nautilus Tug & Towage Sdn Bhd [2018] 8 MLJ 394, HC (folld)

Dato' Tan Kim Hor & Ors v Tan Chong Consolidated Sdn Bhd [2009] 2 MLJ 527, CA (refd)

Edman v Ross (1922) 22 SR (NSW) 351 (refd)

James Theophilus Fredericks v Pelopor Dinamik Sdn Bhd [2020] MLJU 470, HC (refd)

KPM Khidmat Sdn Bhd v Tey Kim Suie [1994] 2 MLJ 627, SC (refd)

Kwan Teck Hian v Insulflex Corp Sdn Bhd [2017] MLJU 1300; [2018] 2 CLJ 335, HC (refd)
Lehman & Co Management Limited v Effiscient Limited & Anor [2011] 4 HKLRD 237; [2011] HKCU 1354 (refd)
Mageswary a/p Kannaiah v Vithylingam a/l Mayandy & Perniagaan Kilat Jaya Sdn Bhd [2009] MLJU 202; [2009] 9 CLJ 40, HC (refd)
Mirza Mohamed Tariq Beg Mirza HH Beg v Perunding Pakarmedia Sdn Bhd [2009] 10 CLJ 273, HC (refd)
Molomby v Whitehead & Australian Broadcasting Corp (1985) 63 ALR 282, FC (refd)
Paul Nicholson lwn Faber Medi-Serve Sdn Bhd dan lain-lain [2002] 1 MLJ 355, HC (refd)
Petlad Turkey Red Dye Works Ltd v Dyes & Chemical Workers' Union, Petlad & Anor [1960] 2 SCR 906 (refd)
Soo Boon Siong @ Saw Boon Siong v Saw Fatt Seong and Soo Hock Seang (as estate representative Soo Boon Kooi @ Saw Boon Kooy (deceased)) & Ors [2008] 1 MLJ 27; [2008] 1 CLJ 365, CA (folld)
Welch & Anor v Britannia Industries Pte Ltd [1993] 1 SLR 673, HC (refd)
Wuu Khek Chiang George v ECRC Land Pte Ltd [1999] 3 SLR 65, CA (refd)

Legislation referred to

Companies Act 1965 (repealed by Companies Act 2016) ss 167, 167(3), (6), (7), 204(1)
Companies Act 2016 ss 2, 48, 48(3), 245, 245(1), (3), (4), (8), (9), 248(4), 347, 348
Companies Act 1967 [SG] s 199

Mak Lin Kum (with John Wong Tze Yeong) (Syed Ibrahim & Co) for the plaintiffs.
Yap Boon Hau (with Ong Kai Rou) (Mah-Kamariyah & Philip Koh) for the defendants.

Chan Sow Keng JC:

INTRODUCTION

[1] Originating Summons WA-24NCC-229–05 of 2021 ('OS 229'), Originating Summons WA-24NCC-248–05 of 2021 ('OS 248') and Originating Summons WA-24NCC-249–05 of 2021 ('OS 249') were filed by the plaintiff against the respective defendants for orders for the plaintiff to inspect and take copies of documents, records and information of PNL Trading Sdn Bhd ('PNLT'), Subang Industry Park Sdn Bhd ('SIP'), PNL Business Services Sdn Bhd ('PNLBS') and PNL Capital Sdn Bhd ('PNLC'), and for such purpose, the plaintiff is:

(a) to be assisted by an auditor; and

(b) be allowed access to servers, cloud storages and any other devices where the documents, records and information are kept.

[2] All three originating summonses were heard together.

[3] After having read the cause papers, considered the submissions and heard oral arguments of the parties, I had allowed the applications. This judgment contains the reasons for the decisions delivered on 9 March 2022.

BACKGROUND FACTS

[4] The plaintiff, first defendant ('D1') and second defendant ('D2') at all material times are the shareholders and directors of PNLT, SIP, PNLBS and PNLC.

[5] The differences and breakdown in relationship between the plaintiff on the one hand, and D1 and D2 on the other, arising at the end of 2019 to 2020, spawned numerous suits between the parties and persons or companies related to the parties. Against this background of litigation, the three originating summons ('OS') were filed.

THE LAW ON A DIRECTOR'S RIGHT TO INSPECT DOCUMENTS

[6] Section 245 of the Companies Act 2016 ('the CA 2016'):

(a) mandates every company, its directors and managers to keep accounting and other records. Section 245(1) reads:

> 245(1) A company, the directors and managers of a company shall:
>
> (a) cause to be kept the accounting and other records to sufficiently explain the transactions and financial position of the company and enable true and fair profit and loss accounts and balance sheets and any documents required to be attached thereto to be prepared; and
>
> (b) cause the accounting and other records to be kept in a manner as to enable the accounting and other records to be conveniently and properly audited.

(b) prescribe that the accounts and records of the company are to be kept for seven years after the completion of the transactions to sufficiently explain the transactions and financial position. This is set out in s 245(3) which reads:

> *245 Accounts to be kept*
>
> ...
>
> (3) The company *shall retain the records* referred to in subsection (1) for *seven*

years after the completion of the transactions or operations to which the entries relate.

(c) provides for a director's right of inspection as follows:

245(4) The records referred to in subsection (1) shall be kept at the registered office of the company or at such other place as the directors think fit, and shall at all times be open for inspection by the directors.

(d) specify that the court may order inspection of the accounting and other records by an auditor acting for a director:

245(8) The court may, in any particular case, order that the accounting and other records of a company be open to inspection by an approved company auditor acting for a director, subject to a written undertaking given to the court that information acquired by the auditor during his inspection shall not be disclosed by him except to that director.

(e) imposes a heavy fine or incarceration or both on the company and every officer in contravention of the section:

245(9) The company and every officer who contravenes this section commit an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both.

[7] Sections 167(3), 167(6) and 167(7) of the Companies Act 1965 ('the CA 1965') are the same as ss 245(4), 245(8) and 245(9) of the CA 2016 except that under s 245(9) of the CA 2016, the fine of RM5,000 or a term of imprisonment of six months or both as stated in s 167(7) of the CA 1965, was increased to a maximum fine of RM500,000 or a jail term not exceeding three years or to both. Section 167 of the CA 1965 is similar to s 199 of the Companies Act, Singapore. This will become relevant when considering the cases decided under s 167 such as *Dato' Tan Kim Hor & Ors v Tan Chong Consolidated Sdn Bhd* [2009] 2 MLJ 527, and the Singapore case of *Wuu Khek Chiang George v ECRC Land Pte Ltd* [1999] 3 SLR 65 (CA).

ABSOLUTE RIGHT OF INSPECTION

[8] It is useful to begin the analysis by a restatement of the relevant principles on this subject which were set out in the leading authority of the Court of Appeal in *Dato' Tan Kim Hor & Ors v Tan Chong Consolidated Sdn Bhd* [2009] 2 MLJ 527 where Low Hop Bing JCA, delivering the judgment of the Court of Appeal referred to the common law and cited with approval a leading Singapore Court of Appeal authority *Wuu Khek Chiang George v ECRC Land Pte Ltd* [1999] 3 SLR 65 in the following manner:

[16] The relevant established principles have been succinctly stated by the Singapore Court of Appeal in *Wuu Khek Chiang George*. There, the appellant, a

director of the respondent, took out an application under s 199 of the Singapore Companies Act (equivalent to our s 167) for an order requiring the respondent to inspect its accounting and financial records. The High Court judge dismissed the application. After reviewing a long line of authorities, the Court of Appeal allowed the appellant's appeal and held, inter alia, that:

(a) the right of a director of a company to inspect its accounting and other records is a right existing at common law and is recognised in s 199 of the Companies Act. Such right is a concomitant of the fiduciary duties of good faith, care, skill and diligence which the director owes to the company, and as such, like other rights and powers, must be exercised for the benefit of the company. The obligation of the company to allow inspection by its director is mandatory;

(b) this right has been described as being 'absolute'. A director is prima facie entitled to inspection and is not required to demonstrate any particular ground or 'need to know' as a basis (see *Molomby v Whitehead*). So long as the right is exercised for the proper performance of the director's duties to the company and not with a view to causing any detriment to the company, it is in that sense 'absolute' (see eg *Dato Aw Kow v Haw Par Bros (Pte) Ltd & Anor* [1972] 2 MLJ 225; [1972–1974] 1 SLR 391; *Haw Par Bros (Pte) Ltd v Dato Aw Kow* [1973] 2 MLJ 169; [1972–1974] 1 SLR 183; *Leong Sun Wing v Wah Hup Engineering Works Sdn Bhd (No 2)* [1977] CSLR VII [1003]; *Welch & Anor v Britannia Industries Pte Ltd* [1993] 1 SLR 673; *Edman v Ross* (1922) 22 SR (NSW) 351 and *Conway and others v Petronius Clothing Co Ltd and others* [1978] 1 All ER 185; [1978] 1 WLR 72);

(c) there is no residual discretion in the court to refuse inspection. Where the court bars a director from exercising his right of inspection, it is not in fact exercising a residual discretion, but is in such an event satisfied on the basis of the evidence before it that the director's intention is to use the information obtained for ulterior purposes such as with a view to causing detriment to the company and that the director is thus abusing the confidence reposed in him (see *Berlei Hestia (NZ) Ltd v Fernyhough* [1980] 2 NZLR 150 per Mahon J); and

(d) the right of a director to inspect the books and records of the company flows from his office as a director and enables him to perform his duties as a director. The corollary of this is that the right will be lost where it is exercised not to advance the interests of the company but some other ulterior purpose to injure the company (see *Edman v Ross* (1922) 22 SR (NSW) 351; *Molomby v Whitehead & Australian Broadcasting Corp* (1985) 63 ALR 282; *Deluge Holdings Pty Ltd v Bowlay* [1991] 9 ACLC 1486; *Welch & Anor v Britannia Industries Pte Ltd* [1993] 1 SLR 673; *Re Geneva Finance Ltd (Receiver and Manager Appointed)* (1992) 10 ACLC 668 and *Paul Nicholson lwn Faber Medi-Serve Sdn Bhd dan lain-lain* [2002] 1 MLJ 355).

...

[28] In our view, s 167(6) is intended to facilitate and liberalise, and is not meant to impede, the right of inspection. *Indeed, almost unbridled powers are conferred upon the court to give effect to the directors' right of inspection*. Clearly, it is within the powers of the court to allow the plaintiffs to furnish a fresh undertaking by the auditor in terms as required by the court, by addressing it to the court and by deleting therefrom the words relating to the appointed servants/agents. This is especially so after the learned judge had arrived at a specific decision that the defendant had, in the first instance, failed to discharge its burden to show that the plaintiffs' inspection would result in any detriment to the interests of the defendant. That is a reaffirmation that *the right of inspection by the plaintiffs as directors of the defendants pursuant to s 167(6) is 'absolute'*. (Emphasis added.)

[9] In *Wuu Khek Chiang George* LP Thean JA held:

[33] *The right of a director to inspect the books and records of the company flows from his office as a director and enables him to perform his duties as a director, including the duty to ensure that the company complies with the requirements as to accounts set out in the Companies Act* (see s 204(1) of the act). Such right is an important one, as the books and records of a company are a primary, and sometimes the only, source of information as to the state of affairs of a company. *It follows that unless a director has access to these sources of information, he would be severely inhibited in the proper performance of his duties*. So long, therefore, as such right is exercised for that purpose and not with a view to causing any detriment to the company, the right to inspect is 'absolute'. In this sense and to that extent, the right may be termed 'absolute'. The corollary of this is that the right will be lost where it is exercised not to advance the interests of the company but for some ulterior purpose or to injure the company (see *Edman v Ross* at p 361; *Molomby v Whitehead* at p 292; *Deluge Holdings Pty Ltd v Bowlay* [1991] 9 ACLC 1486 at pp 1, 486 and 488 and *Re Geneva Finance Ltd (Receiver and Manager Appointed)* (1992) 10 ACLC 668 at p 675–676).

Burden of proof

[34] *The onus of establishing that the right is being, or will be, exercised for an improper purpose lies on the person who asserts it* (per Isaacs J in *The Australian Metropolitan Life Assurance Co Ltd v Frances Stephanie Ure* (1923) 33 CLR 199 at p 219). *There is no burden on a director to show any particular reason for his request for inspection — this will ordinarily be assumed* (see *Molomby v Whitehead* at p 293). It is for those who oppose the director's right to inspect to show 'clear proof' and to satisfy the court 'affirmatively' that the grant of the right of inspection would be for the purpose which would be detrimental to the interests of the company. *There must be a 'real ground' that the right would be abused and that substantial harm would be caused to the company thereby*. (Emphasis added.)

[10] In *Dato' Tan Kim Hor*, Low Hop Bing JCA cited the above two passages with approval as follows:

BURDEN OF PROOF

[9] It is settled law that the defendant, having resisted the plaintiffs' right to inspect the accounting and other records of the defendant, bears the burden of proving that

A the plaintiffs' right is being, or will be, exercised for an improper purpose (see *The Australian Metropolitan Life Assurance Co Ltd v Frances Stephanie Ure* (1923) 33 CLR 199, per Isaacs J and *Wuu Khek Chiang George v ECRC Land Pte Ltd* [1999] 3 SLR 65 (CA), per LP Thean JA).

B [10] It is for the defendant to show 'clear proof' and to satisfy the court 'affirmatively' that the grant of the right of inspection would be for a purpose detrimental to the interests of the company. *There must be a 'real ground' that the right would be abused and that substantial harm would be caused to the company thereby* (see *Wuu Khek Chiang George*).

C THE PLAINTIFF'S CASE

[11] The plaintiff complained that he was excluded from management after the parties fell out in late 2019 and early 2020 and that he needed access to the documents, records and information of the companies to verify the audited D statements.

[12] It is not disputed that the plaintiff is a director PNLT, PNLBS, SIP and PNLC.

E

[13] The plaintiff submitted that as a director, his right to inspect the documents, records and information of the companies is absolute, citing *Dato' Tan Kim Hor & Ors v Tan Chong Consolidated Sdn Bhd* [2009] 2 MLJ 527 and *Paul Nicholson lwn Faber Medi-Serve Sdn Bhd dan lain-lain* [2002] 1 MLJ 355 F where in the later case, at pp 360–361, the court held that a director is entitled to know everything that is happening in the company and such absolute right cannot be seized away by anyone:

> Pada pendapat saya, *hak pengarah untuk akses kepada dokumen syarikat adalah hak* G *mandatori yang diperuntukkan oleh undang-undang (s 167 akta tersebut) dan tiada sesiapa pun boleh melucutkan hak tersebut malah oleh mahkamah sendiri, melainkan di luar peruntukan s 167 tersebut. Hak statutori tersebut diperuntukan supaya tanggungjawab yang dipikul oleh seseorang pengarah sebuah syarikat dapat dilaksanakan dengan telus, adil dan saksama bagi manfaat syarikat khususnya dan menjaga kepentingan pemegang-pemegang saham amnya. Seseorang pengarah berhak* H *mengetahui apa yang berlaku dalam syarikatnya*. Pengetahuan boleh didapati melalui dokumen-dokumen syarikat seperti rekod akaun dan rekod-rekod yang lain. *Kewujudan perkataan 'rekod-rekod lain' dalam peruntukan s 167(3) digubal khusus supaya tanggungjawab pengarah dapat dilaksanakan dengan menyeluruh. Ia merangkumi apa-apa rekod yang berada dalam pegangan syarikat.* Untuk menjaga I kepentingan syarikat, peruntukan tersebut memperuntukkan bahawa dokumen syarikat hanya untuk kegunaan pengarah sahaja dan bukan untuk orang lain. Hak akses kepada dokumen syarikat gugur apabila seorang pengarah tidak lagi memegang jawatan pengarah (lihat *Haw Par Bros (Pte) Ltd v Dato Aw Kow* [1973] 2 MLJ 169; [1972–1974] 1 SLR 183). *Ini adalah hasrat tersirat penggubal undang-undang bagi menghindar penyelewengan terjadi dengan sewenang-wenangnya*

dalam sesebuah syarikat. (Emphasis added.)

[14] Following the authorities alluded earlier, as the plaintiff is a director, it is not necessary for him to provide a reason for the inspection. In the absence of clear proof to the contrary, it will be assumed that he will exercise the right of inspection for the benefit of the company (see *Molomby v Whitehead* and *Edman v Ross*). It is for the company to show that there are ulterior motives to deny that right of inspection.

THE DEFENDANTS' CONTENTIONS

[15] The defendants raised a preliminary point that the plaintiff had jumped the gun by filing action without making a prior request. The defendant's learned counsel submitted that the plaintiff in the three OS sought to rely on his email dated 9 February 2021 relating to a request for documents on an alleged debt owed by one Tian An Trading Sdn Bhd ('Tian An') against PNLT where he filed Kuala Lumpur High Court Civil Suit No WA-24NCC-154–04 of 2021 ('OS 154') for leave to commence a derivative action in the name of PNLT against Tian An to collect debts. The defendants claimed that documents regarding the Tian An debt were furnished to the plaintiff in the proceedings. OS 154 was dismissed on 11 November 2021 on the basis that there is no debt due and owing by Tian An. It was also argued that the plaintiff did not in the email nor in any other document request for further documents to be provided for the purpose of 'exercising his fiduciary duty as a director'. Nor was there any request for documents of SIP, PNLBS and PNLC. In support of their arguments, the defendants relied on *James Theophilus Fredericks v Pelopor Dinamik Sdn Bhd* [2020] MLJU 470 which said at para [6] that before an order pursuant to s 245(8) of the CA 2016 can be granted, the following elements need to be satisfied:

(a) the applicant must be a director of the company;

(b) the applicant has demanded for the inspection of the company's accounts; and

(c) such right has been refused.

[16] With utmost respect to learned counsel for the defendants, this contention fails as I am of the utmost respectful view that *a prior request or demand is not a sine qua non for the commencing of an action* to inspect the accounts of the companies under s 245(4) of the CA 2016:

(a) even if the email dated 9 February 2021 cannot be considered as a request or demand, in my view, s 245 of the CA 2016 is cast in clear language; the court has a duty to expound the language of the words used and apply the plain and ordinary meaning of the words in the section/statute under

consideration. *It will be odious for the court to rewrite it to include a requirement that a prior request or demand is a sine qua non to the commencing of an action by the plaintiff to the court*. A literal interpretation of s 245 supports this view when this section is contrasted with the wordings of other sections in the CA 2016 where a mandatory notice is required — as mere example, for instance, an application under s 348 of the CA 2016 mandating 30 days' prior notice to the directors of the intention to apply for leave of court under s 347;

(b) even if contrary to the view that I have come to, that a prior demand or request for inspection/documents must be made and the right was refused, as suggested by learned counsel Mr Yap Boon Hau, the defendants were served with the OS, which in my opinion, is itself, a demand for inspection;

(c) a similar objection was made in *Mirza Mohamed Tariq Beg Mirza HH Beg v Perunding Pakarmedia Sdn Bhd* [2009] 10 CLJ 273. The objection there was deemed settled when in the course of hearing, the learned judge asked 'whether the company was prepared to allow Mirza access to the accounting and other records of the company. There was no clear affirmative answer in response'. In the instant case before this court, it is evident that the companies in strenuously objecting to the application are not agreeable to let the plaintiff inspect the companies' accounting and other records; and

(d) as such, I am of the view that the two cases of *James Theophilus Fredericks* which followed *Dato' Seri Timor Shah Rafiq v Nautilus Tug & Towage Sdn Bhd* [2018] 8 MLJ 394 (relied upon by the defendants), which laid down the criteria that: (a) the applicant has demanded for inspection; and (b) such right was refused, before the applicant can proceed to bring action in court, being High Court decisions, are persuasive but not binding on this court in regards to this point.

[17] I next turn to deal with whether defendants have, in resisting the plaintiff's right of inspection, shown 'clear proof' and satisfied the court 'affirmatively' that the grant of the right of inspection would be for a purpose detrimental to the interests of the company.

[18] The defendants claimed that the plaintiff had acted in breach of his fiduciary duties owed to PNLBS, PNLC, PNLT and SIP as follows.

Suit 623

[19] Five companies within the PNL Group filed action in WA-22NCC-623–12 of 2020 ('Suit 623') against one Liew Chia Soon ('Liew') (an ex-employee) and Fintree Capital Sdn Bhd ('Fintree') alleging that the

plaintiff had used Liew to incorporate Fintree to conduct a competing business of fund raising and alleged that there is a purported breach of fiduciary duties on the plaintiff's part. The plaintiff was not a party to Suit 623.

[20] Vide an Anton Piller order obtained on or around 12 January 2021 to 14 January 2021, from the documents, equipment and such other records seized in Fintree's office premise, it was allegedly discovered that the plaintiff had instructed that:

(a) company documents be transferred to cloud server;

(b) records be erased from PNL devices;

(c) existing records be tampered with so that the other directors will not have a full picture and information be hidden from them;

(d) staff deceive customers that PNL wanted to exit the business so that the plaintiff could take over the business; and

(e) employees resign from the companies systematically.

[21] The companies also claimed that the plaintiff shared the companies' accounts with Fintree after its incorporation in May 2020 and Liew after his resignation in March 2020. It was alleged that the plaintiff is actively involved in the management of Fintree, and he has an office in Fintree's premises.

[22] Eventually, Liew and Fintree entered into consent judgments with the Suit 623 plaintiffs on 19 January 2021. In a separate settlement agreement with the Suit 623 plaintiffs, Liew also entered into a settlement agreement with the Suit 623 plaintiffs and Liew apparently admitted the plaintiff's wrongdoings.

[23] The companies as such, submitted that the plaintiff should not be allowed to inspect the documents of the companies as he is running a competing business and had conspired with ex-employees to damage the companies. It was postulated that information obtained by the plaintiff will be used by him to support Fintree, to the detriment of the companies.

Suit 142

[24] The Suit 623 plaintiffs filed an action in WA-22NCC-142–04 of 2021 ('Suit 142') against the plaintiff herein and other ex-employees to seek compensation for the loss and damage suffered as a result of the conspiracy to defraud. After Suit 142 was filed, the defendants herein then sought to pass a resolution for the purpose of appointing an expert to determine the loss and damage suffered. The plaintiff herein, upon receiving the resolution, responded with four OS, namely WA-24NCC-228–05 of 2021; WA-24NCC-245–05 of 2021; WA-24NCC-246–05 of 2021 and

WA-24NCC-247–05 of 2021 which the defendants posited is to stop the assessment of damages from being conducted. These four OS were dismissed on 21 January 2022. Further, the plaintiff had filed a discovery application in these suits for discovery and as such, the OS herein for inspection is a fishing expedition to obtain the documents prior to the hearing of the discovery application in Suit 142. It was submitted that the three OS herein were filed within a month of Suit 142 as a backdoor attempt to seek for documents to defend himself in Suit 142.

Numerous suits filed against defendants

[25] The defendants further argued that the plaintiff had vide Kuala Lumpur High Court Originating Summons No WA-28JM-1–01 of 2021 ('OS1') sought to place Fintree under judicial management. The plaintiff's conduct in objecting to the consent judgments entered in Suit 623 as well as the subsequent proof of debt filed by the Suit 623 plaintiffs premised on the consent judgments, was not done not in the best interest of the companies.

[26] Besides the judicial management proceeding filed by the plaintiff in OS1, premised on a claim of partnership, and that the plaintiff was oppressed, he had filed six OS against the defendants, namely WA-24NCC-44–02 of 2021; WA-24NCC-59–02 of 2021; WA-24NCC-91–02 of 2021; WA-24NCC-104–03 of 2021; WA-24NCC-119–03 of 2021 and WA-24NCC-121–03 of 2021 seeking for an order from the court to wind up the companies. In addition, the plaintiff had filed three OS for leave to commence derivative action in WA-24NCC-294–06 of 2021; WA-24NCC-295–06 of 2021 and WA-24NCC-154–03 of 2021, all aimed at destroying the companies after his wrongdoings were exposed by anton piller order in Suit 623.

Competing business

[27] The defendants also postulated that the instant OS should not be allowed as it is apparent that plaintiff is seeking to obtain information to benefit Fintree, and a reason and excuse to destroy and harass the companies and their directors.

Orders sought too wide, no right to take copies

[28] Counsel also argued that the orders sought by the plaintiff for unlimited access to all the documents of the defendants are too wide, and if the court is minded to grant inspection, access should only be given to the accounting records to be inspected and that only the auditor should be allowed to enter the premise of the defendants to carry out the inspection. Further, the plaintiff cannot be allowed to make a copy of the documents as nowhere in s 245 allows

the plaintiff to make copies of the documents.

Matter rendered academic

[29] The defendants submitted that the plaintiff's reason to seek inspection to 'exercise his fiduciary duty and/or to confirm the correctness of the audited financial statements of the defendants' has been rendered academic as the draft audited financial statements of PNLT and SIP for the financial year ended 31 March 2020 and 31 March 2021 were circulated to the plaintiff. He had not raised any query neither did he turn up at the board meeting on 9 December 2021. The audited financial statements have since been finalised.

COURT'S FINDINGS

[30] Bearing in mind that the right of a director to inspect documents is almost absolute, the onus and burden is put squarely on a company to show why it is denying books of accounts to a director. I am of the respectful view that the defendants have not shown 'clear proof' and satisfied the court 'affirmatively' that the grant of the right of inspection would be for a purpose detrimental to the interests of the companies. I am not persuaded that there is a 'real ground' that the right would be abused and that substantial harm would be caused to the companies if inspection is allowed. My reasons are:

(a) firstly, in respect of Suit 623, this court notes that the consent judgment was set aside by the plaintiff vide Kuala Lumpur High Court Originating Summons No WA-24NCC-43–02 of 2021 ('OS 43'), as such, this court is of the view that the allegations of the plaintiff's wrong doings are live issues to be decided in the suit;

(b) second, as for Suit 142, and the numerous suits filed as alluded above, I agree with the plaintiff's submission that those suits are irrelevant in deciding the proceeding herein. I am of the respectful view that undue weight with respect, has been put on them by the defendants, particularly when these suits are still pending determination by the respective courts, and hence, strictly not relevant to the plaintiff's right as a director to inspection of documents. As such, it is a substantial onus and difficult for the companies to credibly object on this ground. It is also not the duty of this court to examine the disputed affidavit evidence pertaining to these suits. In this regard, I refer to *Kwan Teck Hian v Insulflex Corp Sdn Bhd* [2017] MLJU 1300; [2018] 2 CLJ 335 at para [75] which followed the noteworthy observation of Kan Ting Chu JC in *Welch & Anor v Britannia Industries Pte Ltd* [1993] 1 SLR 673:

> *It is not for the court at the hearing of an application (to inspect accounts and records) to go into the disputes between the contending parties* and I will not deal with the charges and counter charges of the plaintiffs and Rajen Pillai

(defendant), beyond saying that they show clearly that the plaintiffs were concerned over the company's account before they made their application.

(c) third, whether the plaintiff did set up or is entitled to set up business in competition with the companies is a triable issue in the six OS on whether the partnership was dissolved as claimed by the plaintiff in February 2020. I think it is inappropriate for the purpose of this application for inspection to form even a prima facie view as to whether these allegations are justified. I have taken note that Mr Yap boon Hau had submitted that in the case of *Conway and others v Petronius Clothing Co Ltd and others* [1978] 1 All ER 185, the court has rejected an order for immediate inspection of document on the ground that there is an on-going suit for breach of directors' duties for running competing business against the director. My reading of the case shows that there was in fact on foot a general meeting of the companies convened to remove the plaintiffs as directors. As it is trite that the right of a director to inspect the company's books of account must determine on removal of the director from office, Slade J accordingly adjourned the part of the motion relating to the books of account of companies until a reasonable time after the proposed general meetings of the companies. I therefore find that *Conway v Petronius* is distinguishable — in the instant case, there was no move to remove the plaintiff as a director from the companies. In addition, Slade J in *Conway v Petronius* in fact stated that 'in the case where there is no reason to suppose that the director is about to be removed from office, the discretion to withhold an order for inspection will be very sparingly exercised'. That is not all. I am in accord with the view in *Kwan Teck Hian* at para [87] which followed the High Court in *Mageswary a/p Kannaiah v Vithylingam a/l Mayandy & Perniagaan Kilat Jaya Sdn Bhd* [2009] MLJU 202; [2009] 9 CLJ 40 which held that 'the fact that the plaintiff had set out a rival company does not *ipso facto* indicate that she would be using the accounts and books for the ulterior purpose of benefiting the company that she had set up';

(d) fourthly, as to the assertion that the matter has been rendered academic as the financial statements have been finalized, in my view, even if the audited financial statements are approved and passed by the board despite the plaintiff not attending the board meeting to raise any queries, will not render the proceedings herein academic:

(i) this regard, the pronouncement of Court of Appeal in *Soo Boon Siong @ Saw Boon Siong v Saw Fatt Seong and Soo Hock Seang (as estate representative Soo Boon Kooi @ Saw Boon Kooy (deceased)) & Ors* [2008] 1 MLJ 27; [2008] 1 CLJ 365 is instructive where it was, inter alia, held as follows:

> the fact that the director had signed documents concerning the audited accounts including the directors' reports is not conclusive of the validity

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> or truthfulness of the accounts. Thus, a director who has approved the company's audited accounts is still entitled to challenge the correctness of such audited accounts.

(ii) what more here, where the plaintiff has not signed the financial statements. I accept the plaintiff's argument that being a director of the companies, he still has a duty to ensure the accuracy and correctness of the financial statements;

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(iii) in *Soo Boon Siong,* the Court of Appeal referred to *Petlad Turkey Red Dye Works Ltd v Dyes & Chemical Workers' Union, Petlad & Anor* [1960] 2 SCR 906, an Indian Supreme Court decision, which held:

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> The mere fact that the statements were made can never be taken as proving that the statements were correct. ... There is no reason why an exception should be made in the case of balance sheets prepared by companies for themselves. It has to be borne in mind that in many cases the directors of the companies may feel inclined to make incorrect statements in these balance sheets for ulterior purposes. While that is no reason to suspect every statement made in these balance sheets, the position is clear that we cannot presume the statements made therein to be always correct. The burden is on the party who asserts statement to be correct to prove the same by relevant and acceptable evidence.

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(iv) the above *Petlad* decision was cited with approval by the Supreme Court in *KPM Khidmat Sdn Bhd v Tey Kim Suie* [1994] 2 MLJ 627;

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(e) fifthly, as to the objection that the orders sought are too wide and the plaintiff should not be allowed to take a copy:

(i) it behoves this court to refer to the definition of 'accounting records' as defined in s 2 of the CA 2016:

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> 2 Interpretation
>
> (1) 'accounting records', in relation to a corporation, includes invoices, receipts, orders for payment of money, bills of exchange, cheques, promissory notes, vouchers and other documents of prime entry and also includes such working papers and other documents as are necessary to explain the methods and calculations by which accounts are prepared;

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(ii) s 245 does not limit inspection to only 'accounting record', the scope of documents is precise and wider, it reads 'accounting and other records to sufficiently explain the transactions and financial position of the company and enable true and fair profit and loss accounts and balance sheets and any documents required to be attached thereto to be prepared'. It seems to me that the scope of inspection as provided by the CA 2016 can potentially cover any

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documents belonging to the company, corporate records and accounts, corporate information and accounting and other records of the company. The court should be slow to accede to arguments advanced by the companies which were intended to encourage a restrictive approach to what a director was allowed to inspect. Any order to be made by this court will naturally be confined to the ambit of the CA 2016 itself;

(iii) the defendants' postulated that the orders sought had gone beyond the provision of s 245 in that nowhere in s 245 allows the plaintiff to make copies of documents but, I do not agree. In my view, this argument is bereft of merits as the right of inspection of a director encompasses the right to ask for copies of the document. Section 245 is to be read with s 48 where s 48(3) provides:

> (3) The person who is entitled under this act to inspect the documents and records referred to in subsection (1) *shall be allowed to make copies or take extracts from the documents and records*.

See also *Dato' Seri Timor Shah Rafiq v Nautilus Tug & Towage Sdn Bhd* [2018] 8 MLJ 394 where Mohd Nazlan J (now JCA) cited with approval *Edman v Ross* and concluded in the following manner:

> *Inspection right includes right to be given copies of documents*
>
> [33] So, does the inspection right encompass the right to ask for copies of the documents? This has been answered in *Edman v Ross* (1922) 22 SR (NSW) 351 in the affirmative. This Australian case is a leading authority on the director's right in common law to inspect and take copies of the accounting records which in addition may be exercised personally or through his agent, such as his accountant. It was held most instructively as follows:
>
> > *A director's right to inspect and take copies of documents belonging to this company is, I think, clear*.
> >
> > In *Burn v The London and South Wales Coal Company and the Risca Investment Company* (7 TLR 118), North J, pointed out that he had this right and not at meetings only. He pointed out the inconvenience that would arise if it were otherwise, and the said that the very object of the director having access to such documents was that he might be prepared to act at meetings. He observed also that it was necessary that confidence should be reposed in a director, that he would use his knowledge for the benefit of the company, and that if a company had no confidence in its directors its proper course was to remove them.
> >
> > *The right to inspect documents and, if necessary, to take copies of them is essential to the proper performance of a director's duties*, and, though I am not prepared to say that the court might not restrain him in the exercise of this right if satisfied affirmatively that his intention was to abuse the confidence reposed in him and materially to injure the company, it is true nevertheless, that exercise is, generally speaking, not a matter of discretion with the court and that he cannot be called

upon to furnish his reasons before being allowed to exercise it. In the absence of clear proof to the contrary the court must assume that he will exercise it for the benefit of his company.

[34] *Does the same position obtain in this country? The short answer is in the positive. I cannot but hold that the right for copies is integral to and intertwined with the very concept of inspection right itself.* Unlike the scope of shareholder's inspection rights, which is more restricted, it is a correct statement of law that in this country the right of a company director to inspect the corporate books and records and access all company information is virtually absolute. This is not difficult to appreciate. As directors are tasked with the responsibility of managing the business and affairs of the company, it is nothing less than axiomatic that the individual director cannot truly make his full contribution to the management of the corporate business unless he or she is given access to the corporation's books and records. (Emphasis added.)

His Lordship Mohd Nazlan J (now JCA) then pithily stated at para [44] that *necessarily implicit in the essence of the right to inspect, is the right to make copies of the documents so inspected. Without the latter, the exercise of the right of inspection would be impaired and rendered not entirely effective*.

[31] The same passage in *Edman v Ross* on a director's right to inspect and take copies of documents belonging to the company was also cited with approval by Nallini Pathmanathan JC (now FCJ) in *Mirza Mohamed Tariq Beg Mirza HH Beg v Perunding Pakarmedia Sdn Bhd* [2009] 10 CLJ 273.

[32] I have not overlooked that the only remaining basis of opposition is that if the plaintiff is allowed access to the accounting and other records of the companies, this may well result in further litigation being filed by the plaintiff which will cause detriment to the companies. I am however not convinced that allowing inspection will have the effect that the defendants claimed. For starters, the plaintiff contends that inspection is to ensure that the plaintiff's statutory duties as a director are complied with and such a purpose cannot be to the detriment of the companies. It is fitting in this context, to refer to the case of *Mirza Mohamed Tariq Beg Mirza HH Beg v Perunding Pakarmedia Sdn Bhd*, where Nallini Pathmanathan JC (now FCJ) held:

[11] When these competing contentions are considered it is evident that:

(i) The real hostility is between Mirza and the other directors and shareholders of the company, not between Mirza and the company per se. *The fact that further litigation may ensue means that there is a possibility that there will be further litigation between Mirza and the other directors and shareholders of the company*. In *Welch & Anor v Britannia Industries Pte Ltd* [1993] 1 SLR 673 it was held, inter alia, that an intention to wrest control of the company from other shareholders cannot be regarded as synonymous with an intention to injure the company. Even if this extends to an intention to force control of the company to one party, that intention will not deprive that same party of the right of inspection. The exercise of the

directors' right of inspection is not extortion or oppression, nor is an intention to remove any person from the management of a company per se an improper purpose. *Given the wide compass of a director's right of inspection, and as s 167(6) is an adjunct to this right, it does not follow that simply because there is a possibility that future litigation may ensue from an inspection in furtherance of the ongoing hostility between the directors and shareholders of the company, that Mirza should be precluded from exercising his rights of inspection as a director*. (Emphasis added.)

[33] I am cognizant that the backdrop to this case is a very acrimonious relationship between the plaintiff and the first and second defendants as directors of the companies, and that parties are embroiled in much litigation which illustrate the hostilities between them. However, where the court is satisfied, as I am, that the plaintiff was acting for a proper purpose, the fact that parties are at loggerheads was of little relevance and was no bar to an application under s 248(4) of the CA 2016. Indeed, cases show that hostility might often be the explanation for the application in the first place. This approach is supported by *Lehman & Co Management Limited v Effiscient Limited & Anor* [2011] 4 HKLRD 237; [2011] HKCU 1354, at paras 53–55; *Welch & Anor v Britannia Industries Pte Ltd* [1993] 1 SLR 673; *Mirza Mohamed Tariq Beg Mirza HH Beg v Perunding Pakarmedia Sdn Bhd* [2009] 10 CLJ 273 at p 279. In *Paul Nicholson* the court explained:

> Lagipun, defendan pertama tidak boleh berselindung di bawah persoalan tersebut untuk menafikan hak plaintif sebagai pengarah kepada dokumen syarikat di bawah peruntukan s 167 akta tersebut. Di sini, saya ingin menarik perhatian kepada petikan kata-kata Kan Ting Chu PK dalam kes *Welch & Anor v Britannia Industries Pte Ltd* [1993] 1 SLR 673 di ms 681–682 (dalam bahasa asal):
>
> > The improper motives referred by Slade J must be motives improper against the company. An intention to wrest control of the company from Rajan Pillai cannot be regarded as synonymous with an intention to injure the company ... *When there is suspicion and lack of co-operation, a director is all the more entitled, perhaps even obliged, to inspect company accounts to protect the interests of the company and its shareholders. The right is not only to be exercised or the duty imposed when there is harmony within the company*. (Emphasis added.)

[34] The range of situations set out in the forceful summing up by Mohd Nazlan J (now JCA) in *Dato' Seri Timor Shah Rafiq*, that do not justify denial of the right to inspect is applicable on the facts of this case as follows:

> [93] The fact that a director may be hostile towards the company or its staff does not limit the inspection right and the right to take copies. *The mere possibility of abuse or misuse of the right does not afford any ground for its denial or restriction*. A director retains this right of inspection (inclusive of the right to be supplied with copies of documents so inspected), despite mere allegations that he is hostile, adverse or a competitor of the corporation, for as long as he remains a director of the company.

[35] I am not oblivious that due to the parties' coloured views of each other, it might well be the case that the plaintiff may partly be motivated by a desire to harass the defendants, and perhaps create a nuisance, but this will be secondary to the plaintiff's 'absolute right' of access to company records by virtue of his office, and the legal position that he does not need to provide justification on why he seeks access. The defendants can always resort to the court's machinery available to deal with vexatious litigants if and when there is an abuse of process or to sue if there was abuse arising from the information obtained.

[36] It is well established that a director of a company has a right to have access to, and to inspect, documents of the company. The right is conferred for the purpose of enabling a director to carry out his duties as a director for the benefit of the company. As each director owes duties to the company to attend to its affairs, it is self-evident that the right to have access to the company's documents and records, is to inform himself as to the company's affairs and, therefore, the better to carry out such duties. This duty is important as directors are exposed to individual liabilities in respect of actions or omissions by them in respect of the company's affairs. Access to records and information is aimed towards discharge of the functions of a director.

[37] On the entirety of the evidence before the court, I am not persuaded that allowing inspection is inimical to the interests of the companies. I regret that I do not see any 'real ground' that the right of inspection would be abused and that substantial harm would be caused to the companies thereby. The possibility of abuse or misuse of the right (of inspection) does not in law afford any ground for its denial or restriction. In this regard, the following observation made in *Dato' Seri Timor Shah* is helpful:

> [93] ... *The mere possibility of abuse or misuse of the right does not afford any ground for its denial or restriction*. A director retains this right of inspection (inclusive of the right to be supplied with copies of documents so inspected), despite mere allegations that he is hostile, adverse or a competitor of the corporation, for as long as he remains a director of the company.
>
> [94] Without clear evidence to such effect, attempts to restrict such rights will not withstand judicial scrutiny. Otherwise, refusal of inspection and taking of copies could lead to a corresponding dilution of accountability on the part of the directors, resulting in an unwarranted and dangerous inroad into the sacrosanct principle of directors' duty of management in company law. (Emphasis added.)

[38] The obligations to keep records and making them available for inspection by directors is underscored by the criminal sanctions spelt out in

s 245(9) when there is no 'real ground' to deny inspection.

[39] I hold that pursuant to s 245(8), the plaintiff is entitled to appoint his auditor, Venu Shaistri a/l Sangaran to assist him in his inspection of the companies' records. In any event, the defendants have not objected against Mr Venu Shaistri a/l Sangaran appointment in the current application.

[40] For all these reasons, I do not think that the objections of the defendants to inspection by the plaintiff has any substance, and I accordingly reject them. I find that the plaintiff has proven his case on a balance of probabilities.

[41] The application in OS 229 is as such allowed in the following terms:

(a) the plaintiff be allowed to attend at the office of the third defendant at 37–7, the Boulevard Offices, Mid Valley City, Lingkaran Syed Putra, 59100 Kuala Lumpur to inspect the third defendant's accounting and other records to sufficiently explain the transactions and financial position of the company and enable true and fair profit and loss accounts and balance sheets and any documents required to be attached thereto to be prepared ('Documents'), and such inspection shall be performed between 9am to 5pm on weekdays, excluding public holidays;

(b) the plaintiff be allowed to attend at the office of the fourth defendant at 37–7, the Boulevard Offices, Mid Valley City, Lingkaran Syed Putra, 59100 Kuala Lumpur to inspect the fourth defendant's documents, and such inspection shall be performed between 9am to 5pm on weekdays, excluding public holidays;

(c) that the plaintiff may be accompanied by Mr Venu Shaistri a/l Sangaran (NRIC: 690918–10–5705) ('Mr Venu'), an approved company auditor, to carry out the inspection of the Documents subject to a prior undertaking given by Mr Venu to the court that the information acquired by him during the inspection shall not be disclosed by him, except to the plaintiff;

(d) that the defendants shall assist the plaintiff and/or Mr Venu to make copies of such Documents which the plaintiff and/or Mr Venu shall identify, and deliver the same to the plaintiff's solicitors, Messrs Syed Ibrahim & Co, within three days, or such longer time that the parties may agree in writing, subject to reasonable charges;

(e) parties shall be at liberty to apply; and

(f) costs of RM4,500 to the plaintiff subject to allocator.

[42] Similar orders with such amendments as appropriate were made against

the respective companies in the other two OS.

Plaintiff's applications allowed with costs.

Reported by Ashok Kumar